IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
APPELLATE CIVIL JURISDICTION

CIVIL WRIT PETITION NO. 1383 OF 2007

Sunil Chandmal Chhajed ...Petitioner
Vs.
Varsha Sunil Chhajed ...Respondent

Ms. Shaheen Khan, Advocate for the Petitioner
Mr. S.P. Thorat, Advocate for the Respondent

CORAM: SHRI ABHAY S. OKA, J.
DATED: 30TH APRIL, 2007

P.C.

1. By order dated 12th April, 2007 the Advocates appearing for the parties were put to notice that the Writ Petition will be decided finally at the admission stage itself.

2. The Petitioner is the husband and the Respondent is the wife. The order impugned in this Writ Petition under Article 227 of the Constitution of India is the order dated 23rd January, 2007 passed by the learned District Judge by which application under Section 24 of the Hindu Marriage Act, 1955 made by the Respondent/wife has been allowed. By the said order, the Petitioner is directed to pay Rs.6000/- per month to the Respondent wife towards the maintenance of herself and of the minor children from the date of application till the date of disposal of the Petition. The

learned Judge directed that the Petitioner shall pay a sum of Rs.10,000/- towards the expenses of the proceedings.

1. The learned Counsel for the Petitioner submitted that the trial Court has committed an error by granting interim maintenance to the Respondent wife though the Respondent wife is employed and is drawing salary of about Rs.7400/- and more per month. The learned Counsel for the Petitioner further submitted that the Respondent is not required to incur any expenditure on the education of the minor children as the education is free for the children. She submitted that the order for payment of interim maintenance as well as litigation expenses is on the higher side considering the income of the Petitioner.

2. The learned Counsel for the Respondent submitted that the Respondent wife is required to incur heavy expenditure not only for the education, but for sports and other activities of the children. He submitted that the present employment of the Respondent is on contractual basis and the contract will come to an end today. He, therefore, submits that no interference is called for in the impugned order.

3. It appears that certain material was placed on record before the trial Court to show that the Respondent was employed. Pay slip of the Respondent wife for the month of

October, 2006 annexed to the Petition shows that after making necessary deductions, the net salary payable to the Respondent was Rs.7425/-. In the affidavit in reply, the Respondent has stated that her appointment will come to an end today. However, in support of the said contention no material is placed on record along with the affidavit in reply. The contention of the learned Counsel for the Petitioner is that the Respondent is not required to incur any expenditure on the education of the children. She has shown me certain documents across the Bar. I find that there is no consideration by the trial Court of the said documents. The Respondent in her affidavit has set out various expenses required to be incurred on various activities of the children. Even the said material was either not before the trial Court or was not considered by the trial Court. The trial Court has not even considered the quantum of the income received by the respondent from her employment. The learned trial Judge has disposed of the prayer for interim maintenance by a cryptic order without considering the material on record. There is no primafacie consideration of the income of the Parties and the expenditure which is required to be incurred on education and other activities of the children. Considering the material placed on record of this Petition by both the parties, the application made by the Respondent at Exhibit-8 needs reconsideration by the trial Court. However, pending the reconsideration of the said application, a

reasonable amount by way of adhoc maintenance will have to be paid by the Petitioner for the benefit of the minor children. The present age of the daughter is 11 years and the son is 5 years. By way of interim arrangement, the Petitioner will have to pay a sum of Rs.2500/- per month for maintenance of the minor children from the date of application till the disposal of the said application. In so far as expenses of litigation is concerned the matrimonial Petition is pending in the Court at Daman and the Respondent is the resident of Sangamner in Ahmednagar District. Therefore, a sum of Rs.10,000/- fixed by the trial Court is reasonable.

4. Hence, I pass following order :

(a) The impugned Judgment and order dated 23rd January, 2007 in so far as it relates to grant of interim maintenance to the Respondent and minor children is quashed and set aside. However, the direction issued by the trial Court to the Petitioner to pay a sum of Rs.10,000/- to the Respondent by way of expenses of the proceedings is confirmed.

(b) Both the parties are at liberty to file additional affidavits in the trial Court and place the relevant documents on record for consideration of prayer for

interim maintenance.

(c) After permitting the parties to file further affidavits and documents, the learned trial Judge shall hear and decide afresh the prayer made in Application exhibit-8 as regards grant of interim maintenance to the Respondent and minor children.

(d) The learned Judge will pass order as expeditiously as possible and preferably on or before 31st July, 2007.

(e) By way of ad-hoc arrangement, the Petitioner will pay a sum of Rs.2500/- per month to the Respondent towards the maintenance of the minor children from the date of filing of the application at Exhibit-8 till its decision.

(f) The amount from the month of May, 2007 onwards shall be deposited by the Petitioner with the trial Court on or before 10th day of each month. The Petitioner is granted time up to 5th June, 2007 to pay the arrears of maintenance payable to the minor children.

(g) It is made clear that a sum of Rs.2500/- is fixed

by this Court only by way of ad-hoc arrangement till the disposal of Application Exhibit-8 and trial Court will decide the application at exhibit-8 on its own merits considering the material produced by the parties.

(h) Time of 2 weeks is granted to the Petitioner to deposit costs of litigation of Rs.10,000/- payable as per the impugned order.

(i) The Writ Petition is partly allowed.

(j) All the parties shall act on the authenticated copy of this order.

JUDGE